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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,006	05/19/2006	Lars Kristensen	IPB.026	7629

48234 7590 07/24/2009
MEREK, BLACKMON & VOORHEES, LLC
673 S. WASHINGTON ST
ALEXANDRIA, VA 22314

EXAMINER

FONSECA, JESSIE T

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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07/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/580,006

Applicant(s)

KRISTENSEN, LARS

Examiner

JESSIE FONSECA

Art Unit

3633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 16 and 17.
Claim(s) rejected: 10, 14, 15 and 18.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Robert J Canfield/
Supervisory Patent Examiner, Art Unit 3635

/J. F./
Examiner, Art Unit 3633

Continuation of 11, does NOT place the application in condition for allowance because: As amended, claim 10 would be rejected under 35 USC 102 to Leue et al. as per the Final Rejection of 3/31/09. Further, as amended, claims 10, 14-15 and 18 would be rejected under 35 USC 102 to Endo et al. as per the Final Rejection of 3/31/09.

Applicant's argues that the entire portion of frame 10 under the exterior rabbet 16 cannot be a flange protruding from the outer surface of the sash as claimed because the entire portion under the exterior rabbet defines the outer surface of the frame. Applicant further submits that the flange designated by Examiner is inconsistent with the meaning of a flange

Examiner respectfully disagrees, note that the flange designated by Examiner protrudes from the outer surface which includes the upper vertical wall defining the rabbet 16 and the vertical wall to which the packing strip 20 is placed. Further note that the flange (222) of applicant includes a nearly identical structure wherein the flange protrudes between two vertical walls (fig. 3). Accordingly, the flange designated by Examiner is considered to be no different than that of applicant's.

Applicant further argues that although Leue et al. discloses that a single glazing may be used, it is the exterior rabbet that is filled with the single glazing, such as that shown in Hubbard '398.

In response, Examiner submits that there is no teaching in Leue et al. that requires the single glazing must be placed in the left-most rabbet. Note, the teaching of Hubbard was not relied on by Examiner.

Applicant further argues the rabbet 16 of Leue et al. is not a concave groove. Applicant further argues that the definition of concave provided by Examiner pertains to polygons, which the rabbet is not.

Examiner submits that the groove (rabbet, 16) is formed by the generally horizontal surface and the vertical surface as shown in fig. 1, which is similar to applicants structure. Note a "rabbet" is defined by Dictionary.com as "a broad groove let into the surface of a board or the like; dado." Further, it is submitted the claim is not specific as to how the groove is formed. In response to applicant's arguments that the definition cited in the Office Action is not applicable, Examiner disagrees. Examiner notes that the cross-section of the frame 10 is a polygon wherein the interior angle of the rabbet would be greater than 180 degrees and therefore is considered a concave groove. Note the above arguments are applicable to the groove of Endo et al. as well.

Applicant further argues that there is nothing to suggest the window of Endo et al. could be used for drainage purposes. Applicant submits that it would seem impossible for moisture to penetrate the window and that only a limited amount of moisture through condensation would be present.

It appears applicant's arguments are directed to intended use of the window, particularly with regards to intrusion of water. Note the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Examiner notes that the structure of Endo et al. is capable of drainage. Further, it is noted that moisture may enter the structure due to improper application or failure of a sealing member or through condensation buildup.

Applicant further argues that entire exterior side of the sash member below the groove is not a flange.

Examiner respectfully disagrees, the flange of Endo et al. is similar to the structure present in figure 3 of applicant's. Further, the protrusion is a rib therefore meeting applicant's provided definition.

Applicant further argues that there is no basis for the groove being present in both the side and bottom members of Endo et al. as asserted by Examiner.

In response, Examiner notes figure 1 of Endo et al. shows the groove present in the top and bottom members. Further, it is noted that the frame pieces are cut into pieces from a single member having oblique end surfaces (col. 5, lines 38-41).